

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DAVID GEVAS,)
Plaintiff,)
v.) No. 08 cv 3074
)
TERRY McCANN, et al.,)
)
Defendants.)

PLAINTIFF'S MOTION FOR
JUDGMENT AS A MATTER OF LAW

NOW COMES the Plaintiff, by his attorney, BARBARA J. CLINITE, and moves this Honorable Court at the close of all the evidence to enter judgment as a matter of law in favor of the Plaintiff and against each Defendant on the issues of liability, and in support thereof states:

1. The evidence clearly shows that the Defendant, DR. GHOSH, received the Plaintiff's grievance that his abscessed tooth was not being treated, and knew that Plaintiff had a serious medical condition which needed treatment.

2. The evidence is uncontradicted that Dr. GHOSH knew about the Administrative Directive and that an acute abscessed tooth is a dental emergency.

3. The evidence is also uncontradicted that DR. GHOSH reviewed the Plaintiff's records and knew that the dentist had seen Mr. Gevas on January 30, 2007 and recommended that the

abscessed tooth be extracted at the next visit.

4. Although the Defendant knew that the Plaintiff was suffering pain and had an emergency dental condition which was not being treated, he did nothing to contact the dental clinic or otherwise assist Mr. Gevas in receiving the treatment he needed.

5. DR. GHOSH admitted that he could refer a patient to the dentist, but instead he simply returned the grievance with a recommendation that Mr. Gevas be referred to the acting health care unit administrator, Dr. Mitchell. He also admitted that he did not contact the dental clinic to arrange an appointment for Mr. Gevas.

6. DR. GHOSH's failure to do anything to assist Mr. Gevas in obtaining emergency care clearly reflects deliberate indifference to his suffering and the risk to his health.

7. Plaintiff respectfully submits that no reasonable juror could conclude, based on the evidence, that the Defendant, DR. GHOSH, did not act with deliberate indifference to Plaintiff's emergency dental need.

8. Plaintiff respectfully submits as to the dental claim against DR. GHOSH, reasonable minds could not conclude that the Defendant did not violate the Plaintiff's right to be free from cruel and unusual punishment, and that there is no genuine issue of material fact for the jury to determine.

9. As to the claim for deliberate indifference in perform in the prostate exam, Plaintiff respectfully submits that the clear evidence establishes that DR. GHOSH intentionally used excessive force in anger to cause pain and injury to Mr. GEVAS when he performed the prostate exam.

10. The medical records confirm that Mr. Gevas had bleeding and pain following the prostate exam, and that he sought medical care for it.

11. Mr. GEVAS' testimony also showed that he had other rectal exams and that none of them were done with such force, or caused any pain or bleeding. There was no testimony from anyone on behalf of the Defendant that a properly performed prostate exam can cause bleeding.

12. Plaintiff respectfully submits that no reasonable juror could conclude, based on the evidence, that the Defendant, DR. GHOSH, did not act with deliberate indifference in performing the prostate exam upon Mr. GEVAS.

13. Plaintiff respectfully submits as to the prostate claim against DR. GHOSH, reasonable minds could not conclude that the Defendant did not violate the Plaintiff's right to be free from cruel and unusual punishment, and that there is no genuine issue of material fact for the jury to determine.

14. As to the claim against DR. AGUINALDO relating to the finger nail fungus, Plaintiff respectfully submits that the undisputed evidence shows that his prescription for medication to treat the fungus ran out weeks before Dr. AGUINALDO saw him in March, 2007, that the Defendant knew that Mr. GEVAS suffered with a serious fungal infection of his fingernails and needed treatment, and that the Defendant refused to order any treatment.

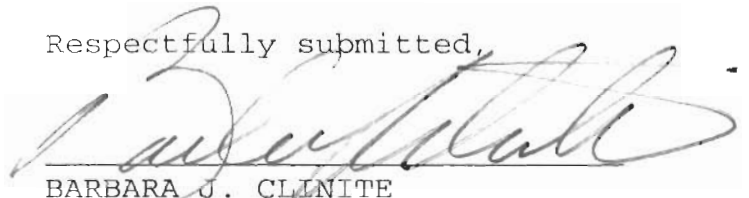
14. The uncontradicted evidence further shows that DR. AGUINALDO saw Mr. GEVAS again in September, 2007 when his fingernail fungus continued and was getting worse, that Mr. GEVAS's prescription for medication was running out, but that DR. AGUINALDO did not order any treatment.

15. Plaintiff respectfully submits that no reasonable juror could conclude, based on the evidence, that the Defendant, DR. AGUINALDO, did not act with deliberate indifference in refusing to treat Mr. GEVAS' fingernail fungus.

16. Plaintiff respectfully submits as to the claim against DR. AGUINALDO, reasonable minds could not conclude that the Defendant did not violate the Plaintiff's right to be free from cruel and unusual punishment, and that there is no genuine issue of material fact for the jury to determine.

WHEREFORE, the Plaintiff respectfully prays for judgment as a matter of law against DR. GHOSH as to the dental and prostate claims, and against DR. AGUINALDO as to the fingernail fungus claim.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Barbara J. Clinite", written over a horizontal line.

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No. 08 C 3074
Judge Guzman

PROOF OF SERVICE

The undersigned, as attorney, hereby certifies that on
July 9, 2011 I caused to be electronically filed the
Plaintiff's MOTION FOR JUDGMENT AS A MATTER OF LAW with the Clerk
of the Court using the CM/ECF system which will send notification
of such filing to the following:

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